

July 23, 2020

VIA E-MAIL

Richard Mednick
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140
mednick.richard@epa.gov

Re: Harbor Island Superfund Site, East Waterway Operable Unit
King County, Washington
Request for Information and Documents dated March 10, 2020
Section 104(e) of CERCLA, 42 U.S.C. § 9604(e)

Dear Richard,

As discussed, we represent BNSF Railway Company ("BNSF") with respect to the above Request for Information and Documents ("Request"). BNSF appreciates the extension of time, until July 23, to provide this initial response to EPA's Request. This letter transmits BNSF's narrative responses and an initial production of documents. We will contact you with details regarding access to documents via a file sharing site and/or compact disc. Some potentially responsive documents are in archive or otherwise not readily available due to various governmental orders and guidelines related to the COVID-19 pandemic. BNSF's search for additional responsive documents is on-going. We anticipate submitting additional responses and documents within the next 60.

Based on our conversations and e-mail exchanges, BNSF will not be providing information or documents regarding the following:

1. The Harbor Island Superfund Site. BNSF, through its predecessor in interest, Burlington Northern Railroad, entered into a Consent Decree with EPA effective August 6, 1996, regarding an operable unit at this Site and as a result BNSF possesses information and documents that may be responsive to the Request but which are already in EPA's files as a result of EPA's oversight of response actions.
2. The Lower Duwamish Waterway ("LDW") Superfund Site. BNSF previously responded to EPA's December 1, 2010, Request for Information and Documents regarding the Lower Duwamish Waterway. There is significant overlap between the LDW "study area" and the East

Waterway "study area" and, as a result, EPA should already have information and documents from BNSF that are responsive to the Request, at least through November 2012.

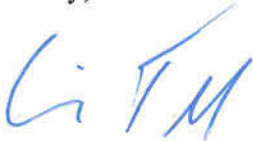
3. Ownership Documents (Question 1.f.). After reviewing examples of ownership documents in BNSF's position for a portion of the study area EPA amended the Request and removed documents regarding "ownership" such as deeds, sales contracts, leases, surveys, blueprints and as-built drawings.

4. Financial Information (Question 2). Substantial, detailed, information regarding BNSF's financial conditions is available from the Securities and Exchange Commission and on BNSF's website. A reference to this information and documents is included in BNSF's response.

5. Insurance Information (Question 3). While BNSF reserves all rights with respect to insurance that may exist and be available to pay for defense or damages arising from claims at the East Waterway Operable Unit, BNSF does not anticipate relying on insurance to respond to any such claims by EPA at this time.

BNSF understands that EPA reserves the right to request this information at a later time.

Sincerely,



Craig S. Trueblood

cc: Ravi Sanga, USEPA (sanga.ravi@epa.gov)
Brooke Kuhl, BNSF Railway Company

**BNSF RAILWAY COMPANY'S RESPONSES TO UNITED STATES ENVIRONMENTAL
RESPONSE, COMPENSATION, AND LIABILITY ACT
REQUEST FOR INFORMATION AND DOCUMENTS
EAST WATERWAY OPERABLE UNIT
HARBOR ISLAND SITE**

1: Identification and Association with Subject Property.

- a. Provide the full legal name and mailing address of Respondent.

*BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131-2830*

- b. For each person answering these questions on behalf of Respondent, provide that person's:
- ii. full name;
 - ii. title;
 - iii business address and electronic mail address; and
 - iv. business telephone number.

*Craig Trueblood
Outside Counsel
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104-1158
craig.trueblood@klgates.com
(206) 370-8368*

*Brooke Kuhl - Senior General Attorney
BNSF Railway Company
201 West Railroad Street, Suite 300
Missoula, MT 59802
brooke.kuhl@bnsf.com
(406) 543-0019*

The following BNSF personnel may be contacted via Brooke Kuhl or Craig Trueblood.

*Adriana Sanchez - Paralegal
Scott Macdonald - Manager Environmental Remediation
Shane DeGross - Manager Environmental Remediation
Mark Engdahl - Manager Environmental Remediation*

***Doug McReynolds - Director Environmental Projects Controls & Real Estate
Ryan Hibbs - Manager Environmental Operations
Justin Piper - Director Hazardous Materials
Jason Martin – Manager Environmental Performance Monitoring & Audit
Calvin Nutt – Manager Engineering
Chad Prior – Director Environmental Engineering***

- c. If Respondent wishes to designate an individual for receiving future correspondence from the EPA concerning the EWOU, please indicate so here by providing that individual's name, mailing address, electronic mail address, telephone number, and fax number.

***Brooke Kuhl - Senior General Attorney
BNSF Railway Company
201 West Railroad Street, Suite 300
Missoula, MT 59802
brooke.kuhl@bnsf.com
(406) 543-0019***

- d. Provide the address of each Subject Property, the time period when Respondent held any ownership or other interest in the Subject Property, and the type of interest held.

Property records for BNSF date back to the late 1880s. To the extent available, BNSF is providing these records for historical properties located within the Study Area. While deeds recording sales, easements, etc. have been retained, in accordance with BNSF record retention policies, some data and information may have been discarded prior to BNSF's receipt of EPA's March 10, 2020 request for information. As such, BNSF has described activities where such information is available to BNSF, but it is unable to provide narrative descriptions of primary activities at all properties historically owned or leased by the company or its predecessors.

To identify properties where BNSF held ownership or other interest, currently or historically, BNSF divided the Study Area North of Spokane Street and the Lower Duwamish Waterway into seven grids. For each grid, BNSF is providing a figure of "acquisitions" and a figure of "sales and dispositions" along with corresponding spreadsheets for each figure. For purposes of these responses, an acquisition is a property interest that BNSF acquired at any time. A "sale and disposition" is a property interest BNSF transferred in its entirety to another party at any time. A "sale and disposition" does not include leases, easements, permits or licenses, etc. where BNSF retained the underlying property interest.

BNSF is producing responsive documents with Bates numbering BNSF_EWOU_000519 thru BNSF_EWOU_000563.

- e. Identify all materials used or created by Respondent's activities or operations at each Subject Property.

BNSF's activities at the Seattle International Gateway (SIG) Intermodal Facility, North SIG, Stacy Yard and Occidental Yard, and at its rights-of-way, rail terminals, and container storage areas generally entail the operation of trains and use of materials commonly associated with train operations, such as diesel fuel, gasoline, hydraulic oil, gear lube, grease, oil and antifreeze. BNSF is a common carrier and also hauls a wide range of materials, including hazardous materials, for its customers.

See also 1.f. and l., below.

- f. Provide copies of all documents regarding the ~~ownership or environmental conditions~~ of the Subject Property, including, but not limited to, ~~deeds, sales contracts, leases, surveys, investigations, sampling, reports, blueprints, "as-builts," and photographs.~~

Via e-mail dated June 25, 2020, EPA modified this request as marked above.

BNSF is producing responsive documents with Bates numbering BNSF_EWOU_000001 thru 000518 and BNSF_EWOU_000564 thru 003686.

Some potentially responsive documents are in archive or otherwise not readily available due to various governmental orders and guidelines related to the COVID-19 pandemic. BNSF's search for additional responsive documents is on-going.

- g. Provide information on the condition of the Subject Property when purchased or at the beginning of the relevant time period; describe the source, volume, and content of any fill used during the construction of the buildings, including waterside structures such as seawalls, wharves, docks, or marine ways.

Although BNSF continues to review its records, it generally acquired the railroad right of way and facilities through this area through predecessor railroads and has not identified documents describing the condition of BNSF's property at the time of acquisition.

BNSF identified documents indicating facility design and construction on BNSF property, including information regarding grading, fill and drainage. BNSF will produce responsive documents with Bates numbering the week of July 27.

- h. Describe the activities or operations at each Subject Property including:
 - i. the date such activities or operations commenced and concluded; and
 - ii. the types of activities or operations performed at each Subject Property, including but not limited to the use, storage, or disposal of any materials in an outdoor location.

Following are general descriptions of BNSF facilities in the Study Area. Additional details regarding activities, operations and materials at each facility can be found in the documents provided under 1.f., above.

Seattle International Gateway (SIG) Intermodal Facility (44 South Hanford Street)

Transfer containers received from trucks for shipping via rail; mobile direct-to-locomotive fueling; maintenance of transfer equipment; and, minor repairs of rail cars (conducted by outside contractors).

North SIG (intersection of South Massachusetts Street and Utah Avenue South)

Transfer containers received from trucks for shipping via rail. Limited to no maintenance activities. Maintenance limited to emergency maintenance on inoperable equipment. Two small above ground storage tanks with diesel to operate diesel powered compressors.

Occidental Yard (2750 Occidental Avenue South)

Maintenance of way section house (maintenance of way employees meet at the section house before dispersing for their work). Fenced in area for storage of equipment and materials. Shop with limited maintenance under cover limited to small equipment work. 500 gallon diesel tank to fuel mobile equipment. Small petroleum product storage area (up to six drums).

Stacy Yard (2943 Colorado Avenue South)

Mechanical car shop. Light railcar maintenance performed at this location. Lube oil tank. Split diesel/gasoline tank (570 gallons).

Occidental Offices (2454 Occidental Avenue South)

Supervisory and administrative activities.

Rights-of-way: *Transporting goods via rail car over rights-of-way as depicted in maps provided in response to 1.d., above.*

- i. Describe each release of materials at or from a Subject Property, including the type and

quantity of the materials, the location of the release, the impacted media, and the response.

BNSF is producing responsive documents with Bates numbering BNSF_EWOU_003687 thru BNSF_EWOU_003742.

Some potentially responsive documents are in archive or otherwise not readily available due to various governmental orders and guidelines related to the COVID-19 pandemic. BNSF's search for additional responsive documents is on-going.

See also, 1.f., above.

- j. Provide information on past dredging or future planned dredging in the EWOU.

Although BNSF continues to review its records, it generally acquired the railroad right of way and facilities through this area through predecessor railroads and has not identified documents describing past dredging in the EWOU. BNSF has no plans for future dredging in the EWOU at this time.

- k. Provide all documents pertaining to the use, storage, or disposal of any hazardous substances, pollutants, or contaminants at the Subject Property.

See 1.f., above.

- l. Provide all information on electrical equipment used at the Subject Property, including transformers or other electrical equipment that may have contained polychlorinated biphenyls (PCBs).

BNSF does not currently use PCBs or PCB-containing materials at its properties. Generally, PCBs would not have been used at any of the BNSF Properties, with the following possible exception. There are records of some old locomotives having utilized small sealed capacitors, which contained less than one pound of PCB-containing materials (e.g., impregnated paper). Records show that these capacitors were removed and disposed of at a PCB incinerator in Coffeyville, Kansas in the mid-1980s as part of a BNSF system-wide program to reduce or eliminate PCBs. The total volume of capacitors removed and incinerated was small, and probably less than two five-gallon buckets. BNSF has located no records of any of those locomotives having operated in the Study Area and no indication that these sealed capacitors ever leaked.

BNSF is producing responsive documents with Bates numbering BNSF_EWOU_003743 thru BNSF_EWOU_003778.

Some potentially responsive documents are in archive or otherwise not readily available due to various governmental orders and guidelines related to the COVID-19 pandemic. BNSF's search for additional responsive documents is on-going.

- m. Provide information on the type(s) of oils or fluids used for lubrication of machinery or other industrial purposes, and any other chemicals or products which are or may contain hazardous substances, pollutants, or contaminants which are or were used at the Subject Property.

BNSF's activities at the Seattle International Gateway (SIG) Intermodal Facility, North SIG, Stacy Yard and Occidental Yard, and at its rights-of-way, rail terminals, and container storage areas generally entail the operation of trains and use of materials commonly associated with train operations, such as diesel fuel, gasoline, hydraulic oil, gear lube, grease, oil and antifreeze. BNSF is a common carrier and also hauls a wide range of materials, including hazardous materials, for its customers.

See 1.h. and k., above.

- n. Provide any Subject Property drainage descriptions plans or maps that include information about storm drainage which includes, but is not limited to, above or below surface piping, ditches, catch basins, manholes, and treatment/detention or related structures including outfalls. If available, also include information about connections to each sanitary sewer.

BNSF is providing copies of its Storm Water Pollution Prevent Plan (SWPPP) and Spill Prevention, Control and Countermeasures (SPCC) plan for BNSF's SIG Intermodal Facility, and its SPCC plans for BNSF's Stacy Yard and Occidental Yard. These documents contain maps and drawings pertaining to storm drainage, manholes, and outfalls. North SIG stormwater runoff goes to a stormwater vault/pre-treating before being discharged off-site to the City's combined sewer. Due to the nature of activities there is no SWPPP or SPCC for North SIG.

BNSF is producing responsive documents with Bates numbering BNSF_EWOU_003779 thru BNSF_EWOU_003852.

Some potentially responsive documents are in archive or otherwise not readily available due to various governmental orders and guidelines related to the COVID-19 pandemic. BNSF's search for additional responsive documents is on-going.

See also, 1.d. and f., above.

- o. With respect to past activities or operations at each Subject Property, provide copies of any stormwater or drainage studies, including data from sampling, conducted at the Subject Property. Also provide copies of any Stormwater Pollution Prevention or Maintenance Plans or Spill Plans that may have been developed for different operations during Respondent's occupation of the Subject Property.

See 1.d., f. and n., above.

- p. Describe each underground storage tank present at any time on a Subject Property, including but not limited to the size and location of the tank, the materials stored in the tank, the time period of use, whether any material leaked from the tank, the type and quantity of leaked material, and the response to the leaked material.

*BNSF is producing responsive documents with Bates numbering
BNSF_EWOU_003853.*

See also, 1.f., above.

Some potentially responsive documents are in archive or otherwise not readily available due to various governmental orders and guidelines related to the COVID-19 pandemic. BNSF's search for additional responsive documents is on-going.

- q. Provide the names and last known address of any tenants or lessees, the dates of their tenancy and a description of the activities or operations they conducted while present at the Subject Property.

Grid 1

*Union Pacific Railroad
March 6, 1987 to date
Interstate railroad activities*

*Clipper Express Company
April 5, 1982 to date
Freight logistics*

*MacMillan Piper, Inc.
March 13, 1987 to date
Warehouse*

MC Terminal, Inc.
October 1, 1982 to date
Unknown

Rainier Petroleum Corp.
January 19, 2010 to date
Petroleum distribution

Foster & Kleiser
March 1, 1964 to date
Advertising

Grid 2

Jack A. Benaroya Co.
July 25, 1966 to date
Unknown

Maust Corporation
March 31, 1987 to date
Unknown

National Railroad Passenger Corporation
September 9, 1998 to date
Interstate railroad activities

Grid 3

National Railroad Passenger Corporation
September 9, 1998 to date
Interstate railroad activities

Grid 4

National Railroad Passenger Corporation
September 9, 1998 to date
Interstate railroad activities

Union Pacific Railroad
March 6, 1987 to date
Interstate railroad activities

Municipality of Metropolitan Seattle
November 16, 1982 to date
Unknown

Charlwood Pacific Properties USA, Ltd.
May 1, 1996 to date
Unknown

Grid 5

Union Pacific Railroad
March 6, 1987 to date
Interstate railroad activities

Grid 6

George A. Moss and Milan G. Moss
February 28, 1946 to date
Unknown

Grid 7

George A. Moss and Milan G. Moss
February 28, 1946 to date
Unknown

Copies of active leases are available upon request.

- r. If Respondent, its parent corporation, subsidiaries or other related or associated companies have filed for bankruptcy, provide:
 - i. the U.S. Bankruptcy Court in which the petition was filed;
 - ii. the docket numbers of such petition;
 - iii. the date the bankruptcy petition was filed;
 - iv. whether the petition is under Chapter 7 (liquidation), Chapter 11 (reorganization), or other provision; and
 - v. a description of the current status of the petition.

Not applicable.

- s. If not already provided, identify and provide a last known address or phone number for all persons, including Respondent's current and former employees or agents, other than attorneys, who have knowledge or information about the generation, use, purchase, storage, disposal, placement, or other handling of hazardous substances, pollutants, or contaminants, or transportation of hazardous substances, pollutants, or contaminants to or from, the Subject Property.

BNSF has provided information above regarding current employees with relevant knowledge. BNSF has operated in the Study Area for over 100 years and has thousands of employees. Moreover, BNSF's employees transfer among the various BNSF facilities across the company's system. It is not feasible to list all current or former employees who may have knowledge or information about BNSF's property in the Study Area.

2. Financial Information

Based on e-mail correspondence with EPA dated July 10, 2020, BNSF is not required to provide detailed financial information at this time. It is BNSF's understanding that if and when EPA decides this information is necessary it will send a supplemental Request for Information to BNSF. BNSF's financial statements are available through the SEC or through the company's website at <https://www.bnsf.com/about-bnsf/financial-information/index.html/>.

- a. Provide true and complete copies of all federal income tax documents, including all supporting schedules, for 2015, 2016, 2017, 2018, and 2019. Provide the federal Tax Identification Number and, if documentation is not available, explain why in detail.
- b. Provide Respondent's financial interest in, control of, or that Respondent is a beneficiary of any assets (in the U.S. or in another country) that have not been identified in the federal tax returns or other financial information to be presented to the EPA. If there are such assets, identify each asset by type of asset, estimated value, and location.
- c. If Respondent is, or was at any time, a subsidiary of, otherwise owned or controlled by, or otherwise affiliated with another corporation or entity, then describe the full nature of each such corporate relationship, including but not limited to:

- i. a general statement of the nature of relationship, indicating whether the affiliated entity had, or exercised, any degree of control over the daily operations or decision-making of Respondent's business operations at the Subject Property;
- ii. the dates such relationship existed;
- iii. the percentage of ownership of Respondent that is held by such other entity(ies);
- iv. for each such affiliated entity provide the names and complete addresses of its parent, subsidiary, and otherwise affiliated entities, as well as the names and addresses of each such affiliated entity's officer, directors, partners, trustees, beneficiaries, and/or shareholders owning more than five percent of that affiliated entity's stock;
- v. providing any and all insurance policies for such affiliated entity(ies) which may possibly cover the liabilities of Respondent associated with the Subject Property or the EWOU; and
- iii. provide any and all corporate financial information of such affiliated entities, including but not limited to total revenue or total sales, net income, depreciation, total assets and total current assets, total liabilities and total current liabilities, net working capital (or net current assets), and net worth

3. **Insurance Coverage**

Based on e-mail correspondence with EPA dated July 10, 2020, BNSF is not required to provide insurance information at this time. It is BNSF's understanding that if and when EPA decides this information is necessary it will send a supplemental Request for Information to BNSF.

- a. Provide copies of all property, casualty and/or liability insurance policies, and any other insurance contracts referencing the Subject Property or EWOU and/or Respondent's business operations (including, but not limited to, Comprehensive General Liability, Environmental Impairment Liability, Pollution Legal Liability, Cleanup Cost Cap or Stop Loss Policies). Include, without limitation, all primary, excess, and umbrella policies which could be applicable to costs of environmental investigation and/or cleanup and include the years such policies were in effect.
- b. If there are any such policies from question "5a" above which existed, but for which copies are not available, identify each such policy by providing as much of the following information as possible:
 - i. The name and address of each insurer and of the insured;

- ii. The type of policy and policy numbers;
 - iii. The per occurrence policy limits of each policy; and
 - iv. The effective dates for each policy.
- c. Identify all insurance brokers or agents who placed insurance for Respondent at any time during the period being investigated, as identified at the beginning of this request and identify the time period during which such broker or agent acted in this regard.
- d. Identify all communication and provide all documents that evidence, refer, or relate to claims made by or on behalf of Respondent under any insurance policy in connection with the Subject Property or EWOU. Include any responses from the insurer with respect to any claims.
- e. Identify any previous settlements with any insurer in connection with the Subject Property or EWOU, or for any claims for environmental liabilities during the time period under investigation. Include any policies surrendered or cancelled by Respondent or insurer.
- f. Identify any and all insurance, accounts paid or accounting files that identify Respondent's insurance policies.
- g. Identify Respondent's policy with respect to document retention.

4. Compliance with This Request

- a. Describe all sources reviewed or consulted in responding to this Request, including, but not limited to:
 - i. The name and current job title of all individuals consulted; and
 - ii. The location where all documents reviewed are currently kept.

The persons listed in 1.b. above were consulted in responding to the Request. They can be reached through Craig Trueblood or Brooke Kuhl.